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Trading With Japan A Survey of Recent Issues and Approaches

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TRADING WITH JAPAN

A Survey of Recent Issues and Approaches

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The United States runs its largest bilateral trade deficit with Japan. Many believe that part is the problem is the issue of access to the Japanese market. The paper identifies the government agencies resonsible for trade activities, discusses current problems, and surveys a series of recent approaches to dealing with trade issues, and concludes with a glimpse of the future. Trade approaches discussed are bilateral negotiations, Market-Oriented, Sector-Specific (MOSS), and the Structural Impediments Initiative, and General Agreement on Tariffs and Trade (GATT).

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TRADING WITH JAPAN

A Survey of Recent Issues and Approaches

The Problem

The United States has run a significant trade deficit for more than ten years. Its largest bilateral deficit has been with Japan, resulting in perhaps its most fractious trading relationship.

Japan is one of our most important allies in Asia; the United States maintains a significant military presence there. Japan has become the leading foreign underwriter of the United States national debt. Japan is the principal source of consumer electronic goods for the American market and a major source of automobiles, machine tools, and semiconductors, to name a few important items.

Japan has had essentially unfettered access to the American market, the largest in the world. At the same time American businesses have complained that Japan has obstructed access to its market. The American public's perception is that the playing field is not level. The result in the last several years has been an increasing barrage of "Japan bashing" from the Congress and the media. One of the most publicized recent events was the President's trip to Japan in January 1992, accompanied by the chief executive officers of the big three American automakers, for jobs, jobs, jobs. This trip was widely seen to be both a foreign relations and public relations disaster.

Japan has the world's second largest economy and potentially an exceedingly lucrative market for American products.

> The concern over the degree of openness of the Japanese market stems mainly from the large bilateral trade deficit the United States has incurred with Japan. This deficit peaked at $56.8 billion in 1987, fell to $41.1 billion in 1990 but has been rising again in 1991. It now accounts for more than half of the overall U.S. trade deficit.[1]

During the early eighties as the United States budget deficit grew, the dollar appreciated against major foreign currencies, including the *yen*, and interest rates rose. These macroeconomic factors affected the trade deficit as the prices of American exports rose and the relative prices of imports fell. Changes in macroeconomic policy in 1985 led to a depreciation of the dollar against the *yen* and other major currencies and a consequent falling trade deficit from 1987 to 1991 when the total deficit was projected to be under $10 billion. Some attribute the sharp drop in 1991 to two factors: the recession in the United States which dampened demand for imports and payments to the United States by other countries to fund the Gulf War. However, the current account deficit is projected to rise again in 1992 and 1993.[2]

Analyses of Japanese trading patterns have shown that Japan alone of the major industrialized nations engages in little intra-industry trade, that is importing and exporting similar products. These studies have shown that while the United States ranks high in such trade flows, Japan ranks very low.[3] These analyses appear to substantiate the perception of a Japanese bias against importing manufactured goods and toward importing raw materials, adding value through processing and aggressively exporting to foreign markets. Moreover, there is a further perception that Japan will delay entry into its market of new high technology goods until Japanese manufacturers have had time to develop competing products.[4] As an island nation with little in the way of natural resources, a solid industrial base and export orientation is critical in the Japanese view to a strong economy and national security.

This bias against imported manufactures has antagonized Japan's trading partners for whom market access has been an issue for many years. Since Japan has among the lowest tariffs of any nation and access has not significantly improved, the focus of trade negotiations is now on non-tariff barriers. These include procedures and regulations related to standards, testing, and certification; quotas and restrictions; government procurement practices; exclusionary business practices; and failure to protect intellectual property (patents, copyrights and trademarks).

Trade issues with Japan have covered a wide ranging array of products and services from rice (banned) to aluminum baseball bats (testing and certification). The United States has used a number of approaches in attempting to resolve them. Negotiations have focused on specific products, on sectors and on structural obstacles. This paper will examine the players in the process and review representative issues and recent approaches to their resolution.

THE ACTORS

The Business Environment

The business climate in the United States, with some hyperbole, may be characterized as having evolved from a highly individualistic, strongly entrepreneurial tradition. Large corporations may have become somewhat more conservative over time; however, the environment remains fiercely competitive. Although many business practices are regulated, t.g., antitrust, reporting requirements for publicly held companies, philosophically the United States favors free and open markets with the "survival of the fittest."

The chaos of the American way is an anathema to Japan where its approach to business mirrors its cohesive society, favoring harmony and order. While competition may be strong, it primarily is based on quality and service, not price, and exists within an acceptable structure. Budding Japanese entrepreneurs encounter many of the same problems breaking into the Japanese market that face American firms.

Government

The Office of the United States Trade Representative is responsible for developing and coordinating United States trade policy. The office, which is an arm of the executive office of the president, is headed by the United States Trade Representative (USTR), who holds cabinet level rank. Other key participants in the executive branch include the Departments of State, Commerce, Agriculture, Treasury and Justice.

The Office of the United States Trade Representative was created in 1962 to manage the interests of the United States in the Kennedy Round of the General Agreement on Tariffs and Trade (GATT). These were multilateral negotiations, proposed by President Kennedy, to stimulate world trade by reciprocal reductions in tariffs. The USTR chairs the interagency committee which proposes trade policy, prepares the agenda, and develops the United States position. With the number of players involved, there are frequently competing interests. The process is therefore heavily weighted toward consensus building, culminating in a cabinet level recommendation to the president.

The USTR, or his representative, leads a team, whose members are drawn from those departments with an interest in a particular negotiation, and usually conducts the negotiations. Negotiations may be bilateral between the United States and another country or multilateral as in the current Uruguay Round of the GATT. In addition, the USTR is responsible for administering parts of trade law. For example, cases of unfair trade under Section 301 of the Omnibus Trade Act, as amended, are brought by the USTR.

The Department of Commerce is responsible for promoting the export of American goods and services. The department assists businesses interested in foreign markets by providing information on business conditions in those markets, sponsors trade fairs and expositions abroad, and mans the commercial sections of American embassies and consular offices. However the Export-Import Bank, which provides financial assistance for American exports, and the Overseas Private Investment Corporation, which insures these transactions, are independent agencies. The Department of Commerce is also responsible for recommending which technologies should be protected for reasons of national security and for licensing the export of high-technology goods. There have been numerous disagreements between the Departments of Commerce and Defense over what should be available for export and to which countries. Generally the DoD has been the more conservative of the two, preferring to restrict those technologies deemed to have high military value.

The Department of State manages United States foreign policy and usually participates in trade talks. Its paramount interest is support for U.S. foreign policy objectives. In trade negotiations State may be more interested in maintaining harmonious relations with the other country, especially Japan, than in supporting U.S. commercial interests.

The Department of Agriculture has an element which vigorously promotes the export of American farm products. The Treasury Department develops and negotiates United States international economic and financial policies. The department is also the sponsor for U.S. international banking interests. The Department of Transportation with the Department of State negotiates international air routes.

The Department of Defense while not normally an active player in international trade nevertheless promotes and manages foreign military sales. In addition the DoD negotiates and assists in the implementation of coproduction agreements with U.S. allies. These agreements are separate from trade negotiations.

While most administrations in general, and the Reagan and Bush administrations in particular, have been proponents of classic free trade and comparative advantage theory, the Congress, responding to constituent complaints, has been somewhat more protectionist. For the last decade the Congress has been the principal champion of stronger trade policies and included in the Omnibus Trade Act of 1988, a section referred to as Super 301.

Super 301, a provision which had a two year life (1989 and 1990), required the USTR to name priority unfair trading partners and undertake action to correct practices harmful to U.S. interests. Annually the Congress threatens additional, more restrictive action. With the current size of the budget deficit, a projected increase in the trade deficit, and a lingering recession, further legislation may be possible this year. However, responsibility for trade oversight in the Congress is fragmented among at least seven committees, making passage problematic.

According to Clyde Prestowitz, an experienced U.S. negotiator, the United States is hampered in its ability to deal with the Japanese because the average tenure of the second, third, and fourth tier political appointees responsible for these activities is two years. Frequently they are individuals with no relevant prior experience and no institutional memory. In addition, there are some who are passing through these positions on their way to something more appropriate elsewhere in the administration and on to better positions back in the business world when they leave government service. He characterizes the interagency process of developing trade objectives and negotiating agendas as the bureaucratic protection of rice bowls and infighting for control. The end result is that the same issues are revisited and renegotiated time and again.

The U.S. team is pitted against the Japanese bureaucracy whose top negotiators are at the pinnacle of outstanding careers and have many years experience, who are more focused and unified. These are extremely well-educated professionals, drawn from the tops of their classes at leading universities. They speak English fluently and are sophisticated users of the media and other resources for reaching those of influence in politics, business and finance. The Ministry of International Trade and Industry (MITI) manages all trade talks for Japan. Other players with an interest in international trade include the Ministry of Foreign Affairs (MFA), Ministry of Posts and Telecommunications (MPT), and Ministry of Education (MOE). Japanese bureaucratic politics are not devoid of conflict, which may be exploited by the United States at times. However, the United States has not been as successful as the Japanese.[5] Whether or not one agrees with Prestowitz, it does appear that Japan has been extraordinarily successful in the trade agreements negotiated with the United States.

The National Trade Estimate

Annually the USTR publishes the *National Trade Estimate Report on Foreign Trade Barriers.* The most recent (1991) edition states that

> Trade barriers elude fixed definitions but may be broadly defined as government laws, regulations, policies, or practices that either protect domestic producers from foreign competition or artificially stimulate exports or particular domestic products.[6]

Generally restrictive business practices and measures to protect national security and public safety are not considered trade barriers although they may have that effect.

Of the eight categories of trade barriers identified by the USTR, only export subsidies is not applied to Japan. Categories and a summary of current trade problems with

Japan included in the 1991 *National Trade Estimate* are outlined below.

> **Import policies** (e.g., tariffs, quotas, import licensing, customs barriers): leather and leather footwear, wood products, paper, agricultural products (beef and citrus quotas replaced by tariffs in 1991 and 1992), rice (banned), feedgrains, fish products.

> **Standards, testing, labeling, and certification** (e.g., restrictive application of standards, lack of self-certification of conformance to foreign product standards): pharmaceuticals and medical devices, food additives, fresh agricultural products.

> **Government procurement practices** (e.g., buy national, closed bidding): supercomputers and computers.

> **Lack of intellectual property protection** (e.g., inadequate patent, copyright and trademark regimes): patents, trademarks, and copyrights.

> **Services barriers** (e.g., restrictions of sale of financial products, regulation of international data flows): construction, architectural and engineering services, legal services, insurance, and obligatory harbor fund contributions.

> **Investment barriers** (e.g., limitations on foreign equity participation, local content requirements, restrictions on transferring earnings and capital): direct investment regulated or prohibited in aircraft, space, agriculture, fishing and forestry, oil and gas, mining, leather and leather product manufacturing, and tobacco manufacturing.

> **Other barriers** (e.g., single sectors): telecommunications terminals, radio equipment and systems, semiconductors, shipbuilding, aerospace, auto parts and motor vehicles, soda ash, distribution system, Japan Fair Trade Commission scrutiny of international contracts, and marketing practice restrictions.[7]

The *National Trade Estimate* lists many goods and services that have been trade issues for years. Recent administrations have used numerous approaches in attempting to resolve these longstanding problems, which nevertheless appear to resurface with amazing regularity.

BILATERAL NEGOTIATIONS ON SPECIFIC PRODUCTS AND SERVICES

Semiconductors

Few issues have been discussed as intensively as semiconductors. Initial industry complaints began to surface in 1981. American producers claimed that Japanese producers were dumping chips and copying U.S. designs. In addition U.S. producers could not sell their chips in the Japanese market. In the face of increasing Congressional pressure for more restrictive legislation, the First Semiconductor Agreement of 1982 was concluded. The Government of Japan agreed to develop a system to track statistics on shipments of semiconductors and to "seek to ensure" reciprocity for American businesses in Japan equivalent to that which Japanese had in the United States.

This was followed by the Second Semiconductor Agreement in 1983. Prestowitz identifies the key feature of these negotiations as a confidential note from the head of the Japanese team that MITI would in effect give administrative guidance ("encourage") to Japanese industry to purchase more U.S. semiconductors and develop the type of long-term, stable relationships with U.S. suppliers that characterized Japanese industry.[9]

However, there was little improvement. U.S. producers failed to penetrate the Japanese market and continued to claim that the Japanese were still selling below cost in both the U.S. and third markets. In June, 1985 the Semiconductor Industry Association (SIA) filed a claim under Section 301 of the U.S. Trade Act of 1974 against Japanese chip makers. The petition alleged that they had participated in an unlawful market-sharing cartel, supported by their government, to expand Japan's market-share worldwide and restrict competing imports in the domestic Japanese market. SIA's case argued that the government provided substantial financial aid to the industry and that Japanese producers were dumping chips in the United States and third-country markets.

By the beginning of 1986 the United States had lost significant market share for semiconductors both domestically and internationally. The trade deficit was growing, and congressional criticism of both the administration and Japan was rising. The U.S. government then initiated its own dumping case against Japan on 256K RAM chips.

The United States and Japan again entered negotiations over semiconductors. The administration again sought greater market access for American chips in Japanese markets and an end to dumping. In the agreement signed in September, 1986 the government of Japan promised to assist American producers in the Japanese market and to encourage the development of long-term, stable relationships between American suppliers and Japanese business. Both governments stated that they expected increased opportunities for U.S.

chip producers in Japan. The Japanese government would track chip exports to prevent dumping.

The United States agreed to defer action on the dumping and unfair trade cases. In addition, the Japanese stated in a confidential side letter that they would help U.S. producers achieve and a 20 percent market share in five years.[10]

The 1986 agreement was again only an interlude to further problems. In 1987 President Reagan imposed 100 percent duties on $300 million worth of Japanese goods when substantial evidence indicated that Japanese producers were still selling chips below cost in other foreign markets. In addition, Japan failed to honor the market access provisions of the agreement. Duties were partially lifted when the U.S. found that dumping had ceased.

The United States and Japan extended the agreement in June, 1991 for another three years. U.S. market share in Japan for semiconductors rose from 8.6 percent in 1986 to 13.3 percent in 1990. The dollar value increased from 236 million in 1985 to over one billion in 1990.[11]

Construction

Construction and related architectural and engineering services have been a target of trade negotiations since the mid-1980s. The potentially lucrative opportunities associated with the building of Osaka's Kansai International Airport (KIA), an estimated eight billion dollar project, increased pressure on American negotiators to open the

Japanese market. The United States charged that Japanese procurement practices violated GATT requirements for open bidding on government contracts in accordance with the 1979 Government Procurement Code, which Japan signed.

Two practices in particular precluded foreign entry into the market: designated bidding and *dango.* To become eligible to bid on a government project, a contractor must have become a designated bidder by registering with the Ministry of Construction. To register a firm must have done work in Japan. The requiring agency then selected those contractors allowed to bid based on previous experience. *Dango* is a collusive market-sharing arrangement among contractors in which they decide who will bid and what price will be proposed. While illegal, the practice persists. According to the Japanese perspective, *dango* promotes harmony and order as opposed to the confusion generated by open bidding. The United States claimed that Japan in tolerating the practice did not enforce its own antitrust statutes.

Since the United States has had open bidding procedures for most federally funded projects, it expected reciprocity in Japan for American firms. Japan claimed that KIA was a "third" sector project, a semipublic project under the direction of the Kansai International Airport Corporation (KIAC) not the government.

Construction was on the agenda at two summit meetings between President Reagan and Prime Minister Nakasone in 1987 and 1988. While maintaining the current system, Japan agreed to provide additional opportunities for foreign firms. Specifically, Japan required the KIAC to make its procedures more open. In addition, the government applied these special procedures to the Trans-Tokyo Bay Highway project.

However, the Congress was not satisfied and in December, 1987 added the Brooks Murkowski amendment to the Omnibus Reconciliation Act of 1987, which prohibited Japanese contractors from bidding on federal projects for one year. In the same month the Congress included a section in the Airport and Airway Improvements Amendments Act of 1987 which effectively precluded from participation in airport construction projects firms from countries which discriminated against American firms in government projects.

This series of events provided the genesis for the Major Projects Agreement (MPA), which remains current. Under the terms of the agreement, foreign firms can register with the Ministry of Construction without prior Japanese work experience and can bid on specified projects. The government added another semipublic project to the two opened in 1987 and required those agencies responsible for additional specified government projects to use the transparent procedures outlined in the MPA. The MPA required that the agencies treat foreign experience and Japanese experience similarly in bid evaluation and contractor selection. The agreement also set up a monitoring mechanism.

Under the Omnibus Trade and Competitiveness Act of 1988, the Congress, still unhappy, required the USTR to investigate Japan's procurement of construction and related services. In November, 1989 the USTR found that *dango* persisted, that the designated bidder system restricted the number of bidders and therefore competition, that the open bidding procedures contained in the MPA only applied to specified projects but all other proje ts were bid under the more restrictive rules. The USTR also determined that the government provided information to domestic contractors, not provided to others, for projects under the MPA. The Japanese promised to address U.S. concerns, and possible retaliation under Section 301 of the trade act was postponed.

In the meantime a major dispute arose over the awarding of the contract for the "people-mover" at KIA to a Japanese joint venture, vice runner-up AEG-Westinghouse, a German-U.S. joint venture, which had installed 14 of 18 such systems worldwide. Claiming it was demonstrably more competitive and experienced, AEG-Westinghouse protested and alleged that the process was biased in favor of the Japanese group. Tensions rose again.

During the review of the Major Project Agreement in 1990, the United States sought the application of open bidding procedures to all government projects and the inclusion of project design phases, the development of an additional set of procedures for projects such as the people-mover, and the resolution of the problems identified by the USTR's investigation. Japan countered that it had never agreed to change its entire system but only agreed to provide a path under the MPA for foreign firms to enter the Japanese market.

Under provisions of water, transportation and energy appropriations acts, after May 1, 1991 firms from countries which discriminated against American firms in bidding on public projects would not be allowed to participate in projects funded by these bills. The USTR on May 1, 1991 submitted for comment a proposal to bar Japanese firms from bidding on most federal projects. On June 1 the U.S. and Japan reached an agreement under which Japan would add 17 more projects to those covered under MPA procedures. The USTR agreed not to bar Japanese firms.

The negotiations over construction were typical of the issues surrounding U.S.-Japan trade. "The Japanese policies and practices that are the targets of U.S. concern are rooted in long-held traditions, and are protected by Japanese policymakers with ties to industry."[12]

MARKET-ORIENTED, SECTOR-SPECIFIC NEGOTIATIONS

Trade negotiations with the Japanese consisted of endless product by product negotiations over minute details with little being finally settled. Concerned about lack of progress, growing calls for "managed" trade, and rising hostility on Capitol Hill as the trade deficit grew, the administration developed a new methodology in 1984. This was termed the Market-Oriented, Sector-Specific approach, which was approved at a summit in 1985.[13] Under MOSS the administration chose several sectors instead of specific products, in which the United States was seen to be especially competitive. The U.S. attempted through thorough negotiations to remove all barriers to American exports to Japan in these sectors.

Initially four sectors were identified: forest products, medical equipment and pharmaceuticals, electronic products (including software, excluding semiconductors), and telecommunications equipment and services. Automobile parts were added later but never received the same attention.

Telecommunications

Numerous barriers to establishing value-added telecommunications services, such as on-line data bases, existed. American firms faced problems in testing and certification and were not allowed to self-certify test results. Japan required that each new product be tested and certified by a Japanese government agency. The process could, and usually did, drag on delaying the entry of American products into the market.

The United States asked for transparency in rule-making and standard-setting, that is avoiding rules and standards which favored Japanese products and services. Negotiators raised concerns that the Nippon Telegraph and Telephone

Company (NTT), which had been converted from a government agency into a private monopoly, would implement a fee structure which would discriminate against competitors. By setting low rates in areas where the competition was strong and subsidizing them by high rates in areas where there was little or no competition, NTT could underprice its competition.

Lincoln notes that these negotiations were exceedingly difficult and at times seemed to make little progress. At one point the Senate called for retaliation against Japanese imports.[14]

The negotiations did finally produce an agreement, which included the following. Self-certification was possible. Japan limited in principle technical standards and requirements for telecommunications terminal equipment to that needed to protect the network and assigned responsibility for testing and approval to an independent agency with no ties to Japanese manufacturers. The government eased the paperwork burden required for approvals and the requirements for participation in new telecommunications business. Changes were made that allowed two American firms tc enter satellite communications. There was an agreement to begin to discuss deregulation of cellular communications. Foreign firms were allowed to participate on private committees which advised standard-setting organizations.

Medical Equipment and Pharmaceuticals

In this sector talks focused on several areas. The first was testing and use of test data, a subject which had in theory been resolved in prior agreements and in a 1983 change to Japanese laws on standards and testing. Others were procedures for approval and licensing, relationships between pricing mechanisms and approvals, discrimination against foreign products by the national health system, and transparency in decisionmaking.

Japan agreed to accept foreign clinical test data and to streamline the process of approving reagents. The government also agreed to reduce the requirements for the reapproval of products which had been modified and to change procedures to facilitate approval of drugs and medical equipment.

Electronics

The major issue in the electronics sector concerned software. MITI had attempted to restrict software protection to patent vice copyright law which is broader and years longer.[15] This issue was settled prior to the negotiations. The MOSS talks focused on preserving the agreements for the protection of intellectual property (software and chip designs). In addition they achieved some tariff reductions and easier use of government owned patents. Some access to government software projects was extended to foreign firms.

Forest Products

Because of heavy pressure from domestic industries, progress in the forest products sector was slow and very difficult. Negotiations in this area had already been underway since 1981. MOSS talks dealt with both tariffs and standards. Much of the discussion centered on the use of wood products in construction, that is, using methods and products standard in the United States but not approved for use in Japan.

The final agreement was quite detailed and achieved some tariff relief. Included were provisions to change building codes to permit more wood and wood panels, a plan to restructure the domestic industry, access for foreign firms to the standard-setting process, an agreement to develop standards for American products not previously used in Japan, such as structural laminated lumber, and the identification of foreign testing agencies which could certify exports to Japan. The government agreed to complete the reorganization of the containerboard industry under the depressed industries law, under which the government can intervene and rationalize (reduce excess capacity) an industry in decline.

Summary

Lincoln concludes

> In another sense the MOSS talks represented no change in Japanese bargaining tactics: issues were pushed to the smallest level of detail, defensive attitudes persisted, and relatively little support came from domestic Japanese forces....Many of the settlements

> involved promises for future action, such as standards revisions or foreign data acceptance, that could still be twisted or ignored at the implementation stage. By the end of the process, U.S. negotiators were literally exhausted by the intensity of the schedule.[16]

All of the sectors covered under MOSS negotiations remained sources of trade friction between the United States and Japan. As noted previously, industries in all of these sectors appear in the 1991 *National Trade Estimate* as currently facing trade barriers in Japan.

THE STRATEGIC IMPEDIMENTS INITIATIVE

With little apparent real progress in reducing the deficit with Japan, the president announced the Structural Impediments Initiative (SII) in May, 1989. The purpose of the SII was to attack those fundamental Japanese policies and practices, which the United States claimed prevented American business from cracking the Japanese market. In return Japan insisted that the United States discuss certain basic problems that it felt hurt the U.S. competitively in world markets. The United States agreed to discuss U.S. savings, corporate investment and behavior, federal regulations, research and development, export promotion, and education. The United States chose for discussion the Japanese distribution system, savings rates, land-use policies, interlocking business relationships (*keiretsu*), exclusionary business practices, and pricing.

For the United States the SII negotiations were led by the USTR and Departments of State and Commerce, as tri-chairs, a somewhat unusual arrangement. For Japan discussions were led by MITI and the Ministries of Foreign Affairs and Finance. A final report on SII was released by the two countries in June, 1990.

The United States agreed that the U.S. savings rate and educational system required attention and agreed to address these problems. The. U.S. also agreed to take steps to reduce the budget deficit. The remaining discussion addresses the Japanese market.

Savings

The American savings rate has been low for a number of years. A poor savings rate coupled with a high federal budget deficit left the United States capital poor. Japan has traditionally maintained a high rate of domestic savings. When combined with a reduction of public spending in the mid-1980s, Japan developed a capital surplus. Moreover, the government in Japan has held the return on savings low. About half of all bank deposits have been subjected to internal rate controls, many less than one percent. The great disparity in the cost of capital put U.S. business at a "comparative disadvantage."

The United States pressured Japan to increase spending on public infrastructure, such as roads, housing, and parks. In addition, the U.S. wanted Japan to encourage greater consumer spending. The U.S. reasoned that increased spending, public and private, would soak up some of the capital surplus and generate increased demand for both domestic and imported products. While Japan agreed to increase public spending over the next ten years, the U.S. felt that the plan fell short.

Japan began a trial 40 hour work week for some government employees as a preliminary move toward shorter work weeks for most public employees. The government said it would consider letting banks issue credit cards and extending the hours of automated teller machines. The U.S. hoped that shorter work weeks, availability of credit, and cash would spur consumer spending.

Distribution System

In Japan the distribution system from raw material to product and from product to consumer is complex and multi-layered. Manufacturers have longstanding relationships with their suppliers and involve them in the development of new products. Loyalty is prized in Japan. For new entrants cost advantage alone is not sufficient for producers to change trusted suppliers. These practices make it very difficult for new suppliers to penetrate existing networks.

In addition most retail outlets are captive "mom and pop" shops that generally sell goods produced by single domestic manufacturers. Larger department stores are found only in Tokyo. Imported consumer goods are usually found only in these larger stores. The Large Retail Store law protects small outlets by requiring approval from a local council, controlled by small retailers, for a business to open a new department or discount type store or expand an existing one. The approval process can be lengthy (up to ten years). Toys 'R Us finally cracked it when store management convinced several important domestic manufacturers that it could dramatically increase sales of their products and secured their support. Competitors also control codes of conduct that govern the offering of premiums, coupons, or discounts to attract buyers to new products.

Japan agreed to make the approval process more open, to shorten the approval period to an 18 month maximum, and to propose changes to the law further reducing the approval period to 12 months. Japan also agreed to develop guidelines under its Antimonopoly Act, addressing exclusionary distribution practices with an anti-import bias.

Japan also proposed improvements in cargo handling at ports and airports and in customs handling with a goal of 24 hour customs clearance (weeks were not unusual). Japan agreed to review government fair competition policies for anticompetitive impacts and to ease some restrictions on the use of premiums and on the sales of pharmaceuticals. Japan continued its commitment to an import expansion package presented earlier in 1990, which included tax incentives and some tariff reductions along with a loan program.

Land-Use

Land-use policies in Japan favor agricultural use and low density housing. The price of land, especially in and around Tokyo, is prohibitive. Housing in Japan is tremendously expensive and average units are quite small by U.S. standards (800 square feet). High costs discourage and foreign companies trying to locate in Tokyo and other major Japanese markets. High costs decrease demand for housing. American negotiators argued that liberalized land-use policies would make it easier for foreign competitors to enter the market and would increase demand for business and home construction. This in turn would improve the prospects for imported construction services and products.

Japan promised to review the impact of its tax structure on agricultural land in urban areas, to consider converting public lands to private use for housing and other projects, to examine the height and size restrictions on buildings to increase the supply of housing, and to align inheritance taxes on land to their real value.

Keiretsu and Exclusionary Business Practices

The *keiretsu* are families of industrial groups, which are unique to Japan. There are six major groups. Three had their origins in the pre-war *zaibatsu*, which were large industrial cartels founded and controlled by powerful businessmen. The *zaibatsu*, who were credited with encouraging Japanese expansionist objectives prior to World War II, were banned after the war. These three are Mitsubishi, Mitsui, and Sumitomo. The other three are centered around banks: Fuyo (Fuji Bank), DKB (Dai-ichi Kangyo Bank), and Sanwa (Sanwa Bank). Each major group includes a bank or financial institution, a trading company, and heavy industry.

There are other smaller *keiretsu* which are either bank-centered or vertically integrated: Tokai, Industrial Bank of Japan, Hitachi, Nissan, Toyota, Matsushita, Toshiba, NEC (Nippon Electric Company), NTT, and others. Of the six major groups, Mitsubishi is the largest with a bank, a trading company, Mitsubishi Heavy Industries and 35 other companies engaged in services, manufacturing, transportation and shipping, and real estate.

Keiretsu companies are linked through financial ties, which include cross-shareholding in group firms and credit through the group bank. Personnel practices include exchange of executives. *Keiretsu* tend to purchase from other group members, even when competitors offer more attractive prices.[17]

American firms charge that these and other (*dango*) exclusionary business practices are collusive and restrain trade. Japan agreed to review *keiretsu* transactions and antimonopoly enforcement and to increase fines and penalties for illegal anticompetitive actions. Japan agreed to strengthen its Fair Trade Commission (FTC). The FTC issued new guidelines in 1990 and promised to step up its enforcement of existing statutes.

Pricing

The depreciation of the dollar against the yen after 1985 did not bring the change in import-export trading patterns that many expected. Prices of Japanese goods remained low in American markets as Japanese producers sought to protect market share. Manufacturers absorbed the losses or raised prices in domestic markets with the result that Japanese tourists frequently found Japanese goods (cameras, electronic equipment) less expensive in New York than in Tokyo. U.S. negotiators charged that these pricing practices contributed toward sustaining the trade deficit. Japan agreed to review this issue with the purpose of promoting competition by providing and publicizing information on price differentials, promoting imports, and setting utility prices appropriately among other measures.

Summary

Japan and the United States agreed to continue to review progress under SII for several years. However, since most of the agreements are very broad and longterm, it remains to be seen whether any improvements will result.

GENERAL AGREEMENT ON TARIFFS AND TRADE

United States negotiators have used multilateral agreements under GATT to pursue further market access and then used GATT disputes mechanisms to follow up on areas where the U.S. felt that the agreements were not being honored. The petition to GATT on beef and citrus products in 1988 led to a Japanese agreement to a phased withdrawal of quotas, which were replaced by tariffs, considered more neutral by economists. In the current Uruguay Round, underway for several years, some relaxation on the ban on rice imports is expected. The beneficiaries, however, may be other Southeast Asian rice producers.

In addition in the Uruguay Round the United States is seeking further protection of intellectual property and further expansion of trade in services and financial products.

THE FUTURE

Japan's economy has grown nonstop since 1974, a year of no growth. Now in 1992 Japan is facing a recession. Prices on the *Nikkei* (Tokyo stock exchange) have been falling for over a year and are currently at about half that reached at their high point in 1989. In the near term the current trade outlook appears difficult as demand in Japan for all goods, including imports, is off, and Japan is expected to push exports aggressively to reduce its inventories. Moreover, according to Robert Samuelson, the true value of the *yen* against the dollar, when adjusted for inflation, is at its 1978 point and is undervalued, helping to keep the price of Japanese exports low.[10] Thus in 1992 the trade deficit with Japan is expected to rise.

In the longer term, however, adjustments are forecast. The single biggest stumbling block in current GATT negotiations is France's unwillingness to consider modifying the European Community's (EC) common agricultural policy, not Japan's intransigence. Hostility from its trading partners and fear of being shut out of the EC and the proposed North America Free Trade Area as well as effects of the current recession may be moderating Japan's relentless pursuit of markets abroad.[19] Samuelson expects that competition between Japan and its trading partners will be more balanced in the nineties than the eighties and that all will benefit.[20]

In reviewing the recent history of trade negotiations with Japan, one is reminded of the eminent American philosopher, Yogi Berra, who announced, "It's *deja vu* all over again." A resolution of recurring trade issues is needed to end "Japan bashing" and the frustration associated with what appears to be a never ending cycle. Surely the United States and Japan, two of the most important trading partners, cannot sustain a harmonious relationship in the current contentious atmosphere. However, it is not likely that the American perception of Japan as an unfair trading partner will change until the American public believes that U.S. businesses have the same access to markets in Japan that the Japanese have had in the United States, that the playing field is finally level.

ENDNOTES

1. Cooper, William H, Japanese-U.S. Trade Relations: Cooperations or Confrontation?, Congressional Research Service, No. IB87158, January 10, 1992, p. 2-3.

2. Elwell, Craig, "The Trade Deficit: Recent Trends and Prospects," CRS Review, 13:2,3, Congressional Research Service, No. 1045-9170, February-March, 1992, p. 3.

3. Lincoln, Edward J., Japan's Unequal Trade, (Washington: Brookings Institution, 1990), p. 39ff.

4. See Prestowitz, Clyde, Trading Places, How We Allowed Japan to Take the Lead, (New York: Basic Books, 1988), for a discussion of Japanese practices in super computers, satellites and telecommunications.

5. Prestowitz, pp.250-270.

6. Office of the United States Trade Representative, 1991 National Trade Estimate Report on Foreign Trade Barriers, March 1991, p. 1.

7. 1991 National Trade Estimate, pp 122-137.

8. For a fuller discussion of the semiconductor issue from a participant's perspective, see Prestowitz, pp 26-70.

9. Prestowitz, p. 53.

10. Prestowitz, p. 65.

11. Gold, Peter L. and Dick K. Nanto, Japan-U.S. Trade: U.S. Exports of Negotiated Products, 1985-1990, Congressional Research Service, No. 92-891, November 26, 1991, pp. 17-18.

12. Cooper, William H., Japanese-U.S. Trade: The Construction Issue, Congressional Research Service, No. 91-303, p.6.

13. Lincoln, pp. 148-153, for a concise but thorough discussion, from which most of this section was drawn.

14. Lincoln, p. 149.

15. See Prestowitz, pp.287-295, for a fuller discussion.

16. Lincoln, p. 151.

17. For a fascinating description of soda ash manufacturers' attempts to break into the Japanese market, see "Statement of the American Natural Soda Ash Corporation," U.S. Congress, Committee on Finance, Subvcommittee on international Trade, United States-Japan Structural Impediments Initiative (SII), Hearing, 101st Congress, 1st Sess., No. S.Hrg 101-594, pr. 1, July 20, 1989, pp. 26-30.

18. Samuelson, Robert J., "Japan's Reckoning," The Washington Post, April 15, 1992, p. A26.

19. Blustein, Paul, "Japan Inc. Rethinks Its Export Edge," The Washington Post, March 15, 1992, p. H1.

20. Samuelson.

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